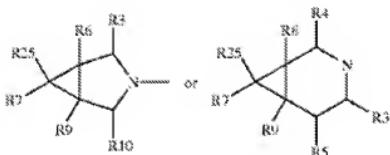


REMARKS

Claims 11-27 are pending and stand rejected under the doctrine of obviousness-type double patenting over claims 1-4, 7, and 9-11 of U.S. Patent 6,395,746. Applicants respectfully disagree that claims 11-27 overlap with the claims of the '746 patent as the Final Office Action alleges. The claims of the '746 patent require a six- or seven-member fused ring at the R² position, as shown below:



Neither of these R² groups corresponds to the structure of moxifloxacin, which has a nine-member fused ring at the relevant position. Claims 11-27 do not overlap with and would not have been obvious over the claims of the '746 patent for at least this reason.

Nevertheless, in an effort to advance prosecution a terminal disclaimer over the '746 patent is submitted herewith. The obviousness-type double patenting rejection is now moot.

An Information Disclosure Statement is submitted herewith. The Statement includes documents from an ongoing Opposition in the counterpart European application, and documents from a U.S. litigation involving the parent application, now U.S. Patent 6,716,830. In the Opposition, the claims were found to be novel. The '830 patent contains product claims, whereas the subject application contains method claims.

The Examiner is invited to telephone the undersigned at the number listed below if doing so would be helpful to resolve any outstanding issues.

Respectfully submitted,
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